



May 15, 2001

Ms. Jennifer S. Riggs  
Hill Gilstrap Riggs Adams & Graham, L.L.P.  
1005 Congress Avenue, Suite 880  
Austin, Texas 78701

OR2001-2005

Dear Ms. Riggs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146659.

The Children's Advocacy Centers of Texas (the "CACT") which you represent, received a request for six categories of information related to the operation of CACT and its relationship with local Child Advocacy Centers ("CAC's"). You note that there has been no previous determination that CACT is a governmental body for purposes of the Public Information Act (the "Act"), and you request a decision on this issue. You indicate that CACT does not have information responsive to some of the request categories and that it will release requested contracts and videos to this requestor. However, you assert that CACT objects "to producing the other information requested on the basis of section 264.408 of the Family Code." You also indicate that portions of the responsive information are excepted from disclosure by sections 552.101, 552.110, and 552.117 of the Government Code. We have reviewed the submitted information and comments.

The Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. In pertinent part section 552.003 of the Government Code defines "governmental body," as:

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Gov't Code § 552.003(a)(10). Courts, as well as this office, previously have considered the scope of the Public Information Act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of

the Texas Attorney General do not declare private persons or businesses “governmental bodies” subject to the Act “‘simply because [the persons or businesses] provide specific goods or services under a contract with a government body.’” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the Attorney General’s office generally examines the facts of the relationship between the private entity and applies three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.”

*Id.*

As the *Kneeland* court noted, when considering the breadth of the definition of “governmental body,” this office has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support. For example, in Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the “commission”), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a “governmental body” under the Open Records Act. Open Records Decision No. 228 (1979) at 1. The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission to, among other things, “[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City’s interests and activities.” *Id.* at 2. In response to this provision, we stated, “[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of ‘*supporting*’ the operation of the Commission with public funds within the meaning of section 2(1)(F).” *Id.* (Emphasis added.) Accordingly, we found the commission to be a governmental body for purposes of the Open Records Act. *Id.*

You relate, "CACT is the statewide organization that enters into contracts with eligible local Children's Advocacy Centers (CACs) to enhance the services they provide." You have provided a copy of a contract entered into with CACT by the State of Texas, as provided by section 264.409 of the Family Code. This statute provides, in relevant part:

The [Department of Protective and Regulatory Services] or the office of the attorney general may contract with a statewide organization of individuals or groups of individuals who have expertise in the establishment and operation of children's advocacy center programs. The statewide organization shall provide training, technical assistance, and evaluation services for local children's advocacy center programs.

Family Code § 264.409(a). The subject contract provides, "CAC TX shall perform the administrative responsibilities of the [Office of the Attorney General] for the Children's Advocacy Center Program established [under chapter 264 of the Family Code]. You relate that "[Texas] state funding accounts for approximately 42% of CAC TX's funding." From our review of your comments and the subject contract, we conclude that CACT is a governmental body for purposes of the Act. CACT must therefore release information in response to a written request unless an exception to disclosure is shown to apply to that information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 264.408 of the Family Code provides:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

(b) Information related to the investigation of a report of abuse or neglect under Chapter 261 and services provided as a result of the investigation is confidential as provided by Section 261.201.

(c) The department, a law enforcement agency, and a prosecuting attorney may share with a center information that is confidential under Section 261.201 as needed to provide services under this chapter. Confidential information shared with or provided to a center remains the property of the agency that shared or provided the information to the center.

(d) A videotaped interview of a child made at a center is the property of the prosecuting attorney involved in the criminal prosecution of the case involving the child. If no criminal prosecution occurs, the videotaped interview is the property of the attorney involved in representing the department in a civil action alleging child abuse or neglect. If the matter involving the child is not prosecuted, the videotape is the property of the department if the matter is an investigation by the department of abuse or neglect. If the department is not investigating or has not investigated the matter, the videotape is the property of the agency that referred the matter to the center. If the center employs a custodian of records for videotaped interviews of children, the center is responsible for the custody of the videotape. A videotaped interview may be shared with other agencies under a written agreement.

(e) The department shall be allowed access to a center's videotaped interviews of children.

Family Code § 264.408.

You suggest that the language of 264.408(a) makes all information related to all services provided under chapter 264 of the Government Code confidential. We find this interpretation to be inconsistent with a close reading of chapter 264. The chapter contemplates several types of services. Subchapter B provides for foster care; subchapter C provides for specified child and family services; subchapter D provides for services to at-risk youth; subchapter E provides for children's advocacy centers; subchapter F provides for child fatality review and investigation; subchapter H provides for child abuse program evaluation; and subchapter I provides for "Communities in Schools Program," a youth dropout prevention program. Subchapter A defines the general provisions of this chapter. It is not plausible that all records of all of these services are made confidential by a provision of subchapter E. Further, we note that chapter 264 contains confidentiality provisions that would be surplusage if all records of all services provided under all subchapters were made confidential by section 264.408(a) of the Family Code. *See. e.g.* Family Code §§ 264.408 (b),(d)and (e), 264.511(a), 264.610. It is also noteworthy that section 264.511(a) makes confidential the information and records acquired by a child fatality review team that are acquired "*in the exercise of its purpose and duties,*" while 264.511(b) provides for the release of certain information from these same teams. Clearly, chapter 264 of the Family Code contemplates several categories of information related to services provided under that chapter, and provides confidentiality protection to only a portion of that information.

Section 264.408(a) makes confidential “[t]he files, reports, records, communications, and working papers *used or developed in providing services under this chapter.*” Also note that the release provisions of 264.408(a)(2) refer to the attorney of the “*child who is the subject of the records.*” In light of the language of this and the above discussed provisions of Family Code chapter 264, we conclude that section 264.408(a) applies only to information that directly relates to the provision of specific services provided to or for a child under Family Code chapter 264, subchapter E. This statute does not make administrative information confidential, except to the extent that such information reveals the identify a child to whom or for whom such services were provided.

From our review of the submitted materials, we conclude that this information is purely administrative and that it does not reveal the identity of any child receiving services under Family Code chapter 264, subchapter E. Therefore, the submitted information is not made confidential by section 264.408(a) of the Family Code.

You also suggest that sections 552.101 and 552.110 of the Act may protect responsive financial statements. Section 552.101 encompasses information made confidential by judicial decision. Texas courts hold that information is protected by common law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal financial information concerning an individual, and not involving a transaction with a governmental body, generally meets both prongs of this test, and is therefore protected by a common law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). However, the public has a legitimate interest in financial transactions with governmental bodies. Further, privacy rights do not protect business interests. Open Records Decision No. 192 at 4 (1978) (right of privacy protects feelings of human beings, not property, business or other monetary interests). We have marked the information that is protected by the common law right of privacy. That information must be withheld under section 552.101 of the Government Code.

Section 552.110 of the Government Code protects certain business interests. This section excepts information of two types (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 at 2 (1991). Section 552.305(d) of the Act requires a governmental body to make a good faith effort to notify a party whose proprietary interest may be implicated by the release of the requested information. The third party notice must be sent within ten days of the governmental body’s receipt of the request and must include a copy of the written request for information and a statement in the form prescribed by the attorney general. The required notice informs third parties that they may submit to the attorney general, within ten days of receiving the notice, their reasons why the information in question should be withheld. Section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing that the information is excepted from disclosure. *See* Open Records Decision No. 661 (1999);

*see also National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). As no comments in support of section 552.110 have been submitted in regard to the subject financial statements, we cannot determine that any of the responsive information is excepted from disclosure by this section of the Government Code. Therefore, no information may be withheld under section 552.110.

You indicate that the submitted materials include information that is subject to section 552.117 of the Government Code. This section excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024 before the request for information was received, but you may not withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made or who did not make this request.

We also note that the included materials include Texas driver's license numbers, which are excepted from required public disclosure by section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers pursuant to section 552.130. We have marked the numbers for your convenience.

In conclusion, you must withhold the home addresses, home telephone numbers, social security numbers, and personal family members information of public employees who requested that this information be kept confidential before the subject request for information was received, the information that we have marked as protected by the common law right of privacy, and Texas driver's license numbers, which we have also marked. All other responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

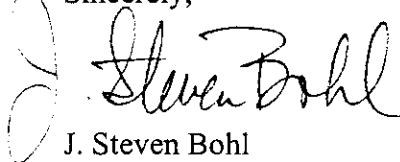
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steven Bohl". The signature is written in a cursive, flowing style. To the left of the signature is a large, stylized, handwritten letter "J" that serves as a decorative flourish or part of the signature.

J. Steven Bohl  
Assistant Attorney General  
Open Records Division

JSB/MJB/sdk

Ref: ID# 146659

Encl: Submitted documents

cc: Mr. Gary W. Gates, Jr.  
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(w/ø enclosures)

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